

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In Re: W.R. GRACE & CO., et al., Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING
FEE APPLICATION OF LEXECON LLC
FOR THE TWENTY-SIXTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Fee Application of Lexecon LLC for the Twenty-Sixth Interim Period (the "Application").

BACKGROUND

1. Lexecon LLC ("Lexecon") was retained as asbestos claims consultants to the Official Committee of Equity Security Holders. In the Application, Lexecon seeks approval of fees totaling \$801,368.00 and expenses totaling \$9,426.58 for its services from July 1, 2007 through September 30, 2007 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2006, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued

January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Lexecon, and received a response from Lexecon, portions of which response are quoted herein.

DISCUSSION

General Issues

3. We note for informational purposes that Economist James J. Heckman billed 93.00 hours in the Application at the hourly rate of \$1,800.00. This is the highest hourly rate we have seen for a U.S. professional in this case or any other pending in this district. Thus, we asked Lexecon to provide us with Dr. Heckman's qualifications, as well as any other factors, to explain how Lexecon can command this high an hourly rate for Dr. Heckman's time. Lexecon responded as follows:

Dr. Heckman is the recipient of the 2000 Nobel Memorial Prize in Economic Sciences. He is the Henry Schultz Distinguished Service Professor of Economics at the University of Chicago where he has served since 1973 and where he directs the Economics Research Center and the Center for Social Program Evaluation at the Harris School. He is also a Senior Research Fellow at the American Bar Foundation. Dr. Heckman is an outside academic affiliate of Lexecon. His rate for litigation work, which is the amount he is paid by Lexecon, is similar to or lower than litigation billing rates of other experts of whom we are aware, with credentials including the Nobel Prize.

We have no authority to recommend a reduction in a professional's hourly rate simply because it is extraordinarily high. However, in *In re USG Corporation*, Case No. 01-2094 (JKF), Transcript of Proceedings, July 19, 2004, p. 14, the Honorable Judith K. Fitzgerald asked that we call to the Court's attention any instance in which a professional's rate reaches \$1,000.00 per hour, and thus we are complying with the Court's request.

Specific Time and Expense Entries

4. In our initial report, we noted that Lexecon research assistants, billing at hourly rates of between \$355 and \$370, billed 69.40 hours for fees of \$24,926.00 on activities which appeared to be more appropriate for paraprofessionals billing at a lower hourly rate. These time entries are listed on Exhibit "A." There is authority in this district for adjusting rates downward for routine tasks. "Routine tasks, if performed by senior partners in large firms, should not be billed at their usual rates. A Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn." *Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3rd Cir. 1983). Thus, we asked Lexecon to explain why these tasks should be compensated at the professional's or paraprofessional's full hourly rate. Lexecon responded as follows:

The report notes that 69.4 hours of work appears to be for activities that appear to be more appropriately performed by paraprofessionals at a lower hourly rate. The work in question relates to:

- Research to identify technical articles, journals and publications related to specific issues relevant to the asbestos litigation
- Conversion of data to SAS readable format
- Creation of exhibits and indexes of exhibits and transcripts; final review of exhibits

The three individuals performing information research comprise Lexecon's database research group. They each have ten to fifteen years of litigation based data and information research experience and two have advanced degrees in library science. They have specific training and experience understanding underlying litigation issues and identifying articles, journals and documents responsive to such issues. During the twenty-sixth interim period these individuals obtained numerous academic papers and studies which are not available from commonly used public sources. They also prepared a multiple year event study of significant events concerning W.R. Grace. Obtaining the specific information necessary to perform Lexecon's analytical work

requires an experienced researcher with knowledge of the case issues, the ability to construct a data search to produce relevant results, and knowledge of the appropriate sources to search. An experienced researcher can perform this work in a quick, efficient manner which is essential in a litigation context and at a cost which may be comparable or less than a less experienced individual spending more time at a lower billing rate. These individuals also reviewed the documents obtained to ensure the documents were relevant, thereby reducing the time required by members of Lexecon's economists with higher billing rates. The work of these individuals is specialized and is critical to Lexecon's end work product.

Much of the data Lexecon receives is not in a format that can be read by SAS, the analytical software used by Lexecon. Conversion of data to a SAS readable format requires experience dealing with data in a variety of formats and software to convert the data to formats Lexecon can use. The process of converting data in the W.R. Grace case was complicated by misleading file extensions, which created corrupt data when initially read in, and thus required technical expertise to diagnose and remedy the problem to produce a reliable data base from which expert testimony could be based. Second, the large number of variables in the dataset required technical expertise and facilities to handle such files in a reliable manner. The work of these individuals is highly technical and critical to our analysis work.

The creation of indexes for the final report and review of the report was completed by an experienced individual to ensure the accuracy of the exhibits and report. The exhibits were prepared using complex statistical software and require someone with knowledge of the software and the analysis being performed to review the exhibits and provide assurance that the results are accurate. This final review is not clerical in nature needs to be done by an individual capable of performing the underlying work.

We appreciate Lexecon's response and have no objection to these fees.

5. In our initial report, we noted data charges totaling \$8,078.81. Thus, we asked Lexecon to explain the nature of these charges. Lexecon responded as follows:

The report requests additional information regarding the nature of \$8,078.81 of data charges. The majority of these charges relate to academic papers, studies and trade press articles purchased from Dialog and Factiva. This information was identified and obtained by our research staff and used in our analysis. These charges are based on Lexecon's cost.

In response to a follow-up inquiry, Lexecon advised: "Lexecon's data charges are at Lexecon's cost


paid to the outside vendor, or an allocation of cost if the data is used on more than one client. We do not add in any other charges or amounts.” We appreciate Lexecon’s response and have no objection to this expense.

CONCLUSION

In summary, we recommend approval of \$801,368.00 in fees and \$9,426.58 in expenses for Lexecon’s services during the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 
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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 28th day of February, 2008.


Warren H. Smith

SERVICE LIST

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